85-1342

No.

Supreme Court, U.S.
FILED
FEB 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1985

---

CHICAGO PARK DISTRICT, *et al.*,

*Petitioners,*

*v.*

SILAS J. ALEXANDER, *et al.*,

*Respondents.*

---

## APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

---

THOMAS A. FORAN
JACK J. CARRIGLIO*
JEFF D. HARRIS
DOUGLAS R. STEVENS
*Attorneys for Petitioners Chicago Park District, et al.*
** Counsel of Record*

FORAN, WISS & SCHULTZ
30 North LaSalle Street
Suite 3000
Chicago, Illinois 60602
(312) 368-8330

Pandick Midwest, Inc., Chicago • 733-6000

## INDEX TO APPENDIX


| | App. Page |
|---|---|
| OPINION OF THE COURT OF APPEALS (September 19, 1985) | 1a |
| ORDER OF COURT OF APPEALS CORRECTING OPINION AND DENYING PETITION FOR REHEARING (November 13, 1985) | 14a |
| ORDER AND MEMORANDUM OF DISTRICT COURT (October 18, 1984) (Dismissal of Fourth Amended Complaint) | 16a |
| ORDER OF DISTRICT COURT (September 23, 1983) (Denial of Motion for New Trial) | 35a |
| ORDER AND MEMORANDUM OF DISTRICT COURT (September 23, 1983) (Dismissal of Counts II, III and IV of Third Amended Complaint) | 36a |
| ORDER OF DISTRICT COURT (August 17, 1983) (Entry of Judgment on Verdict on Count I of Third Amended Complaint) | 42a |
| JUDGMENT OF COURT OF APPEALS (September 19, 1985) | 43a |
| FOURTH AMENDED COMPLAINT IN SIX COUNTS | 44a |
| TEXT OF 42 U.S.C. §§ 2000e to 2000e-17 | 67a |

In the

# United States Court of Appeals

## For the Seventh Circuit

No. 84-2995

SILAS J. ALEXANDER, et al.,

*Plaintiffs-Appellants,*

*v.*

CHICAGO PARK DISTRICT, et al.,

*Defendants-Appellees.*

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 79 C 2242—**George N. Leighton**, *Judge.*

ARGUED JUNE 4, 1985—DECIDED SEPTEMBER 19, 1985

Before CUMMINGS, *Chief Judge*, ESCHBACH, *Circuit Judge*, and WRIGHT, *Senior Circuit Judge.**

WRIGHT, *Senior Circuit Judge.* This lengthy litigation alleging discrimination in resources allocation and employment by the Chicago Park District during the years 1970 through 1980 raises these issues:

1) Did the court err in dismissing three counts of the amended complaint under res judicata and collateral estoppel?

2) Did it err in dismissing the remaining three counts of the amended complaint for failure to state a cause of action under 42 U.S.C. § 1983?

3) Did it err in denying plaintiffs' recusal motions?

* The Honorable Eugene A. Wright, Senior Circuit Judge of the United States Court of Appeals for the Ninth Circuit, is sitting by designation.

FACTS

The procedural sequence in this case is convoluted and will be simplified here to include only pertinent facts.

In 1979, Alexander filed a class action on behalf of all Black, Hispanic and poor Chicago residents alleging racial discrimination by the Chicago Park District and its attorneys, superintendent and past and present commissioners (collectively District). Personal liability is sought against the individual defendants.

In 1982, we affirmed the court's denial of plaintiffs' motion for a preliminary injunction to restrain the budgetary and fund allocation actions of the District. *Alexander v. Chicago Park District*, 709 F.2d 463 (7th Cir. 1983). Plaintiffs then filed two unsuccessful motions to disqualify Judge Leighton and followed these with a mandamus petition which we denied on February 8, 1983. Alexander's petition for an en banc rehearing on this mandamus petition was denied on April 4, 1983.

In 1983, the district court denied plaintiffs' motion for class notification under FED. R. CIV. P. 23(c)(2). It determined that class members would not be prejudiced because if the defendants prevailed, the class members without notice would not be bound.

Later in 1983, the district court consolidated this case with another class action, *Midwest Community Council, Inc. v. Chicago Park District (Midwest)*, No. 79 C 3187 (N.D. Ill. Sept. 16, 1983) (unpublished), which raised similar discriminatory recreational resources allocation claims against the District. The *Midwest* action sought only equitable relief.

In count I of the second amended complaint, plaintiffs alleged that defendants administered the Chicago Park District in a racially discriminatory manner, so that parks located in predominantly Black communities were allocated less park resources, including state and federal funds, resulting in injuries and disparities in equipment and services. This count was brought under 42 U.S.C. § 1983.

Relying on the Due Process and Equal Protection clauses of the United States and Illinois Constitutions and on § 1983, plaintiffs brought employment discrimination claims in counts II and III. Count II charged that a civil service examination administered by the Park Service was not (1) job-related, (2) culturally, racially and sexually unbiased, and (3) objectively administered.

Count III dealt with hiring, assigning and promoting employees based on race and ethnicity. This count also alleged a variance in numbers of administrative, recreational, support and maintenance staff between parks in white and non-white communities. This in turn was alleged to have forced certain plaintiffs to resign from park employ because of limited job opportunities.

Count IV, brought under § 1983, alleges personal injuries to several plaintiffs resulting from these racially discriminatory practices. A fifth count was subsequently deleted.

The consolidated cases were tried in 1983. The court severed Alexander's employment discrimination and tort claims. During trial, Alexander filed a third amended complaint, similar to the second in the relevant allegations.

After a three-month trial, the jury returned a verdict for the defendants on the resources allocation claims and judgment was entered against plaintiffs on count I in the *Alexander* suit. Because the jury heard the *Midwest* claims in an advisory capacity only, the court subsequently entered judgment for the District, incorporating its own findings of fact and conclusions of law. No appeal was taken from the *Midwest* judgment.

Defendants moved for summary judgment contending that the jury verdict on count I was res judicata on all claims in counts II, III and IV. In an order dated September 23, 1983, the court granted summary judgment on count IV, reasoning that the underlying basis of the tort claim was discriminatory resources allocation causing

dangerous conditions in black neighborhood parks. The court granted a partial summary judgment on counts II and III to the extent that discrimination in resource allocation or administration would not be relitigated. It then dismissed counts II and III under FED. R. CIV. P. 54(b) to allow the parties to appeal.

Alexander did not appeal but filed an amended complaint as authorized in the September 23 order. Count I alleged that the District expended federal funds in a racially and ethnically discriminatory manner in violation of regulations of the Department of Housing and Urban Development and Department of Interior under 42 U.S.C. § 1983.

Count II sought an injunction, reinstatement, back pay and damages under Due Process and Equal Protection Clauses of the United States and Illinois Constitutions and under 42 U.S.C. § 1983. It challenged the civil service examination given by the District on November 1, 1977 for a physical instructor position.

Count III incorporated the allegations of count I that defendants allocated resources to the parks in a discriminatory manner and the allegations of count II concerning the civil service examination. It also was brought under 42 U.S.C. § 1983.

Count IV alleged that the District had a policy of allocating resources and employees on a discriminatory basis in violation of the Due Process and Equal Protection Clauses of the United States and Illinois Constitutions and 42 U.S.C. § 1983. It sought monetary relief for hiring, assignment and payment of personnel on a racially discriminatory basis.

Count V alleged that the District expended federal funds in a discriminatory manner and contrary to federal regulations, resulting in class members being forced to resign from the District's employ. Count VI alleged that the policy of expending federal funds in a discriminatory manner resulted in reduced maintenance, aid and in-

spections at minority parks, resulting in physical injuries to minority members.

The District moved to dismiss on the grounds of res judicata and that the complaint failed to state a claim under 42 U.S.C. § 1983. The court granted the motion on October 18, 1984, dismissing counts I, V and VI on res judicata grounds and counts II, III and IV for failure to state a claim.

ANALYSIS

**Res Judicata**

Res judicata is a doctrine of repose. "Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if . . . conclusiveness did not attend the judgments of such tribunals." *Nevada v. United States*, 463 U.S. 110, 129 (1983), quoting *Southern Pacific Railroad v. United States*, 168 U.S. 1, 49 (1897). *See also Grip-Pak, Inc. v. Illinois Tool Works, Inc.*, 694 F.2d 466, 469 (7th Cir. 1982) (purpose is to reduce costs of litigation).

Under res judicata, or claim preclusion,[1] a prior judgment on the merits bars the same parties or their privies

[1] Preclusion occurs under two theories: issue preclusion and claim preclusion. Claim preclusion bars relitigation of claims or issues which were or could have been raised in a prior suit on the merits between the same parties or their privies. Plaintiffs' claims are merged in the judgment for plaintiff while judgment for defendant acts to bar any further claims by plaintiff against that defendant. It is usually referred to as res judicata, and that is how we use it. *See Migra v. Warren City School Dist. Bd. of Education*, 465 U.S. 75, ____ 104 S. Ct. 892, 894 n.1 (1984).

(Footnote continued on following page)

from relitigating all issues which were raised and decided or could have been raised in the prior action. *Harper Plastics, Inc. v. Amoco Chemicals Corp.*, 657 F.2d 939, 945 (7th Cir. 1981); *Lee v. City of Peoria*, 685 F.2d 196, 199 (7th Cir. 1982). The doctrine applies in civil rights suits as well. *Lee*, 685 F.2d at 198-99; *Local 1006, A.F.S.C.M.E., AFL-CIO v. Wurf*, 558 F. Supp. 230, 233 (N.D. Ill. 1982). *See also Migra v. Warren City School Dist. Bd. of Education*, 465 U.S. 75, ____, 104 S. Ct. 892, 899 (1984) (state preclusion law applies in federal § 1983 suit brought subsequent to state suit).

In determining the preclusive effect on the six counts in the fourth amended complaint of the jury's verdict on count I and the summary judgment on count IV of the third amended complaint, the court analyzed the three threshold requirements of res judicata: (1) identity of parties; (2) identity of causes of action; and (3) a final judgment on the merits. *Lee*, 685 F.2d at 199. *See Nevada v. United States*, 463 U.S. 110, 129-30 (1983); *Local 1006*, 558 F. Supp. at 234.

1. **Identity of Parties**

The court found that named plaintiffs in the fourth amended complaint were named also in the third amended complaint and so concerned itself only with the last two requirements. Twenty-seven plaintiffs were named in the third amended complaint. They were named in the fourth amended complaint, with the addition of the Commite Latino. No allegations were made as to the membership of the Commite and no motion for intervention was made.

---

[1] *continued*

Issue preclusion prevents relitigation of a matter of fact or law that was previously litigated and decided. *See Jones v. City of Alton*, 757 F.2d 878, 879 n.1 (7th Cir. 1985). It is usually referred to as collateral estoppel.

The trial court dealt with both issue and claim preclusion. Because of our decision on claim preclusion, we need not reach the collateral estoppel issue.

*See* 3B J. Moore, J. Kennedy, *Moore's Federal Practice* ¶ 23.90[2] (2d ed. 1985). The court ignored it as not properly a party to this class action and we agree.

On appeal the plaintiffs argue that res judicata was inappropriate because the court refused to require notice to the class. This does not affect application of res judicata against the named plaintiffs. Any preclusive effect against potential class members not notified of the suit is not an issue before us. *See Teamster Local 282 Pension Trust Fund v. Angelos*, No. 84-2141, slip op. at 4 (7th Cir. May 13, 1985) (second court decides for itself preclusive effect of first litigation).

**2. Identity of Causes of Action**

The trial court held that counts I of the third and fourth amended complaints were identical. It found that counts V and VI were premised on the same facts, which is sufficient identity for res judicata purposes.

A cause of action consists of "a single core of operative facts" which give rise to a remedy. *Mandarino v. Pollard*, 718 F.2d 845, 849 (7th Cir. 1983) (operative facts were employment termination and surrounding circumstances), *cert. denied*, ____ U.S. ____, 105 S. Ct. 116 (1984); *Coward v. Colgate-Palmolive Co.*, 686 F.2d 1230, 1234-35 (7th Cir. 1982) (essential fact underlying first and second suit was seniority), *cert. denied*, 460 U.S. 1070 (1983); *Lee*, 685 F.2d at 200 (cause of action consists of single core of operative facts).

Plaintiffs assert that they complain of violations of federal regulations in counts V and VI, charges not made in previous complaints. This argument is to no avail. The essential fact in count I of the third amended complaint was discriminatory fund disbursement. It is the essential fact underlying counts V and VI of the fourth amended complaint.

A mere change in the legal theory does not create a new cause of action. *Shadid v. Oklahoma City*, 494 F.2d

1267, 1268 (10th Cir. 1974). *See also Harper Plastics*, 657 F.2d at 945 ("An unsuccessful party may not . . . frustrate . . . res judicata by cloaking the same cause of action in the language of a theory untried in the previous litigation."). Extensive evidence regarding compliance with the regulations was presented at trial.

Plaintiffs argue also that the general jury verdict is insufficient to determine precisely what was found on each issue. This confuses res judicata and collateral estoppel.

They assert that they were precluded from presenting evidence on injuries and deaths at the parks. The injury evidence went only to the issue of damages, not liability.

Both of the preceding arguments can be characterized as a challenge to the opportunity to fully and fairly litigate these claims. *See Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982); *Lee*, 685 F.2d at 201. This argument cannot be sustained in view of the three-month jury trial. Plaintiffs had a full and fair opportunity to litigate the issue of fund allocations. *See Jones*, 757 F.2d at 884; *Ohio-Sealy Mattress Mfg. Co. v. Kaplan*, 745 F.2d 441, 451-52 (7th Cir. 1984), *cert. denied*, 105 S. Ct. 2656 (1985).

3. **Finality**

The plaintiffs challenged finality on the grounds that the September 23 order was insufficient for rule 54(b) purposes. The district judge did not agree but found that, even if the order was not appealable, it had the requisite finality for res judicata purposes.

Rule 54(b) requires that if a court enters final judgment on fewer than all the claims it must make a determination that there is no just reason for delay and expressly order the entry of judgment. FED. R. CIV. P. 54(b). The September 23 order did not technically comply with Rule 54(b), but it was clear:

> In order to enable the parties to this cause to appeal or cross-appeal, and in conformance with Rule 54(b), Fed. R. Civ. P., counts II and III of the Third

> Amended Complaint are dismissed, subject to the right of plaintiffs to file a Fourth Amended Complaint . . . .

The plaintiffs argue that remarks made by the court at a post-judgment conference indicate that the judgment was not to be considered final. The remarks came upon entry of the order. Because it is clear, and because the parties were explicitly told that the court wanted guidance from an appellate decision, we are convinced that the parties knew of their right to appeal.

The court did say it would certify under 28 U.S.C. § 1292(b) the res judicata effect of the count I verdict on counts II, III and IV. Even though no 28 U.S.C. § 1292(b) certification was entered, this did not make less clear the September 23 order.

Finally, while not expressly determining there was no just reason for delay in the order itself, the judge did determine that an appeal would be in the interest of the public, the court and the plaintiffs. This litigation had been before Judge Leighton for four and one-half years.

Although reluctant to deviate from the strict Rule 54(b) requirements, we have held that less than technical compliance will suffice when neither party is prejudiced by the lack of formality. *Local P-171, Amalgamated Meat Cutters & Butchers v. Thompson Farms Co.*, 642 F.2d 1065, 1072-73 (7th Cir. 1981); *accord Equal Employment Opportunity Comm'n v. Delta Air Lines, Inc.*, 578 F.2d 115, 116 (5th Cir. 1978). Plaintiffs' prejudice, if any, stems from their choice not to appeal the September 23 order and not from lack of sufficient notice that the order was appealable.

Plaintiffs also challenge the dismissal of count IV of their third amended complaint on res judicata grounds. This issue was appealable as of September 23, 1983. We note that the district court correctly determined this issue.

The district court was also correct that the September 23 order was sufficiently final for res judicata purposes even if not appealable. *Lummas Co. v. Commonwealth Oil Refining Co.*, 297 F.2d 80, 89 (2d Cir. 1961), *cert. denied*, 368 U.S. 986 (1962), held that judgments not final for § 1291 can be " 'final' in the sense of precluding further litigation [depending on] such factors as the nature of the decision, . . . the adequacy of the hearing and the opportunity for review." *Accord O'Reilly v. Malon*, 747 F.2d 820, 822-23 (1st Cir. 1984); *Commodity Futures Trading Comm'n v. Board of Trade of City of Chicago*, 701 F.2d 653, 657 (7th Cir. 1983); *Chemetron Corp. v. Business Funds, Inc.*, 682 F.2d 1149, 1191 (5th Cir. 1982), *rev'd on other grounds*, 460 U.S. 1007 (1983).

There is no doubt that two of the three *Lummas Co.* factors have been met here. The jury rendered a verdict only after a protracted trial. *See also Aiello v. City of Wilmington*, 470 F. Supp. 414, 419 (D.Del. 1979), *aff'd*, 623 F.2d 845 (3d Cir. 1980) (jury verdict final "in the sense of inalterable" from the date entered).

**Title VII and § 1983**

The district court dismissed the remaining counts of the Alexander plaintiffs' complaint on the grounds that Title VII is the exclusive remedy for employment discrimination charges. Under the principle established in *Trigg v. Fort Wayne Community Schools*, No. 84-1942 (7th Cir. June 25, 1985), we reverse.

Title VII is not the sole remedy for employment discrimination claims of state employees. *Id.*, slip op. at 5-6. Congress intended to retain preexisting remedies. Only if the right asserted was created by Title VII must it be vindicated through the procedural system set up in that Act. *Accord Day v. Wayne County Bd. of Auditors*, 749 F.2d 1199, 1204 (6th Cir. 1984). *See also Carpenter v. Stephen F. Austin State University*, 706 F.2d 608, 612 n.1 (5th Cir. 1983) (Title VII is remedy unless specific allegations of constitutional violations); *Rivera v. City of Wichita Falls*,

665 F.2d 531, 534 n.4 (5th Cir. 1982) (when § 1983 used as alternate remedy to Title VII, elements of cause of action are the same); *Whiting v. Jackson State University*, 616 F.2d 116, 121 (5th Cir. 1980) (same).

We sympathize with defendants' position and note that our holding and that of the Sixth Circuit create the anomolous situation that a federal employee is limited by the administrative procedures of Title VII while state employees are not. Because we interpret what remedies Congress has provided, we rule as we do. Congress may amend Title VII if it so chooses.

Counts II and IV are based on the Fourteenth Amendment's protection against intentional discrimination based on class membership. *Trigg*, slip op. at 2; *Huebschen v. Department of Health and Social Services*, 716 F.2d 1167, 1171 (7th Cir. 1983). They survive at this stage of the proceedings.

Count III is more problematic. Plaintiffs concede it is based on statutory violations. *See Maine v. Thiboutot*, 448 U.S. 1, 4 (1980). To the extent that it also alleges discriminatory fund disbursement, the district court has correctly ruled that the issue is already decided and may not be relitigated. That court will carefully limit the evidence to assure that defendant will not again be subjected to defending those allegations.

**Recusal**

On November 12, 1982, plaintiffs filed disqualification motions against Judge Leighton under 28 U.S.C. §§ 144 and 455(a). The motions were based on statements by the court during the hearing on plaintiffs' motion for a preliminary injunction and findings and conclusions entered in ruling on that motion.

Again we rule against plaintiffs on this issue. Under section 144, bias "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the

case." *United States v. Grinnell Corp.*, 384 U.S. 563, 583, 86 S.Ct. 1698, 1710, 16 L.Ed.2d 778 (1966); *United States v. English*, 501 F.2d 1254, 1263 (7th Cir. 1974), *cert. denied*, 419 U.S. 1114 (1975). The plaintiffs' affidavits set forth only rumor concerning the administration of the Chicago NAACP 25 years ago.

Plaintiffs' insinuations that the trial judge did not vigorously pursue alleged discrimination when he represented the NAACP are not an extrajudicial source of bias. What must stem from an extrajudicial source are facts and information.

Judge Leighton called as a witness Mr. Jones, a former President of the Chicago NAACP whom he had represented 25 years earlier. He indicated surprise that the plaintiffs had not called Jones or deposed him.

Contrary to plaintiffs' assertions, Jones' credibility was not automatically enhanced. The judge specified in denying the recusal motion that he had not prejudged Jones' testimony. *Cf. Roberts v. Bailar*, 625 F.2d 125, 127-29 (6th Cir. 1980).

Section 455(a) requires recusal if the judge's impartiality might reasonably be questioned. 28 U.S.C § 455(a); *Pepsico, Inc. v. McMillen*, No. 85-1932, slip op. at 3-4 (7th Cir. June 6, 1985). The association between Judge Leighton and Mr. Jones in 1958 was ancient history and insufficient to support a recusal motion.

**CONCLUSION**

We affirm the dismissal of counts I, V, and VI on res judicata grounds. We remand counts II, III and IV to the district court to rule first on the several other grounds raised in the District's summary judgment motion.

Judge Leighton has dealt with this complicated case in an admirable fashion. We affirm his dismissal of plaintiffs' recusal motions.

This case has been in the court system since June 27, 1979. In the interests of bringing it to an end and decreasing the costs to the parties and the courts, we retain jurisdiction during this remand. After final orders are entered below, this case will be resubmitted to this court and panel without oral argument. Leave will be granted to file briefs within three weeks after the record is certified to us. *See Grano v. Department of Development of City of Columbus*, 637 F.2d 1073, 1082 (6th Cir. 1980).

AFFIRMED IN PART AND REVERSED IN PART.

A true Copy:
Teste:

*Clerk of the United States Court of Appeals for the Seventh Circuit*

USCA 50234—Pandick Midwest, Inc., Chicago—9-19-85—450

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

November 13, 1985.

Before

Hon. WALTER J. CUMMINGS, *Chief Judge*

Hon. JESSE E. ESCHBACH, *Circuit Judge*

Hon. EUGENE A. WRIGHT, *Senior Circuit Judge**

SILAS J. ALEXANDER, et al.,
*Plaintiffs-Appellants,*

No. 84-2995 vs.

CHICAGO PARK DISTRICT, et al.,
*Defendants-Appellees.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 79-C-2242
**George N. Leighton,** Judge.

## ORDER

On consideration of the petition for rehearing of defendants-appellees and the response thereto of plaintiffs-appellants, our slip opinion of September 19, 1985, is hereby corrected in the following two respects:

On page 11 of the slip opinion, the paragraph beginning "Count III is more problematic * * *" is replaced with the following four paragraphs:

> "Count III is more problematic. Plaintiffs concede that it is based on statutory violations. Generally, where a statute provides its own comprehensive enforcement

* The Honorable Eugene A. Wright, Senior Circuit Judge of the United States Court of Appeals for the Ninth Circuit, is sitting by designation.

scheme, that scheme may not be bypassed by pleading an underlying violation of the statute and bringing suit directly under § 1983. *Middlesex County Sewerage Authority v. National* Sea Clammers Association, 453 U.S. 1, 20 (1981) (Federal Water Pollution Control Act, Marine Protection, Research and Sanctuaries Act); *Smith v. Robinson*, 104 S.Ct. 3457, 3468 (1984) (Education of the Handicapped Act); *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (habeas corpus).

"Title VII is one of the statutes that may not be bypassed. *Grand American Federal Savings v. Novotny*, 442 U.S. 366, 375-378 (1979) (Title VII may not be bypassed via § 1985(3)). Is Title VI like Title VII in this respect?

"We think it is. Title VI provides its own administrative enforcement procedure which would be bypassed by pleading Title VI violations under § 1983. Moreover, the remedies available under Title VI should in some cases be limited to declaratory and injunctive relief. *Guardians Association v. Civil Service Commission*, 463 U.S. 582, 597-598 (1983). This limitation would be lost in the broad grant of a remedy at law or equity available under § 1983.

"Since Title VI provides its own remedial scheme, we hold that private actions based on Title VI may not be brought under § 1983. See *Guardians Association*, 463 U.S. at 610 n.3 (Powell, J., concurring)."

On page 12 of the slip opinion, the paragraph beginning "We affirm the dismissal * * *" is replaced with the following paragraph:

"We affirm the dismissal of counts I, V and VI on res judicata grounds. We affirm the dismissal of count III for failure to state a claim. We remand counts II and IV to the district court to rule first on the several other grounds raised in the District's summary judgment motion."

The petition for rehearing is hereby denied.

UNITED STATES DISTRICT COURT.
Northern District of Illinois
Eastern Division

Name of Presiding Judge, Honorable George N. Leighton

Cause No.: 79 C 2242 Date: Oct. 18, 1984

Title of Cause: Silas Alexander, et al. v. Chicago Park District, et al.

Brief Statement of Motion: Order ruling on defendants' motion to dismiss plaintiffs' Fourth Amended Complaint.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorney. Please do this immediately below (seperate lists may be appended).

Names and Addresses of moving counsel: _____

_____

Representing: _____

_____

Names and Addresses of other counsel entitled to notice and names of parties they represent.

_____

_____

Reserve space below for notations by minute clerk

The cause is before the court on defendants' motion to dismiss plaintiffs' Fourth Amended Complaint. For the reasons stated in the court's Memorandum, filed herewith, the motion is granted and this suit is dismissed in its entirety.

/s/ Leighton, *J.*

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

IN THE UNITED STATES DISTRICT COURT

Northern District Of Illinois

Eastern Division

SILAS J. ALEXANDER, et al.
*Plaintiffs,*

*v.*

CHICAGO PARK DISTRICT, et al.,
*Defendants.*

No. 79 C 2242

Before the Honorable
**George N. Leighton**
United States District Judge

**Memorandum**

The cause is before the court on defendants' motion to dismiss plaintiffs' Fourth Amended complaint. For the following reasons, the motion is granted.

I

The suit in this case is a class action arising out of the alleged activities and practices of the Chicago Park District, during the years 1970 through 1980. Its origin can be traced from to June 1, 1979 when the original complaint, brought pursuant to 42 U.S.C. §§ 1983 and 1988, was filed by Dorotho Ware as sole plaintiff: But before defendants had answered, the complaint was amended with 35 Negroes and Hispanics as the named plaintiffs suing on behalf of themselves and "all individual black, Latino or poor residents of the City of Chicago."[1] Defendants were the Chicago Park District, nine former and present Commissioners, and its General Superintendent. The

[1] This class was later certified. The court, however, denied plaintiffs motion to send notices to the class members, it being determined that notice was only necessary in this type of class suit if, and only if, plaintiffs were successful on the merits.

amended complaint contained seven counts, however; for reasons not pertinent here, the court dismissed two of the counts. Thereafter, plaintiffs filed a second amended complaint containing five counts.

In Count I, they asserted claims under 42 U.S.C. §§ 1983 and 2000a, *et seq.*[2] They alleged that defendants, through their administration of the Chicago Park District system, had engaged in the practice of race discrimination in the allocation of resources so that parks located in communities largely populated by Negroes were denied park resources, including state and federal funds, in a manner that resulted in racial disparities, to the injury of plaintiffs and members of the class.

In Counts II and III, plaintiffs, relying on the due process and equal protection clauses of the United States and Illinois Constitutions, and on 42 U.S.C. § 1983, asserted claims for employment discrimination. In Count II plaintiffs, made reference to a "civil service examination" administered by the Park District and alleged that the examination was not "reasonably job-related, not reasonably free of cultural, racial and sexual bias and administered under such circumstances as not to assure objectivity, impartiality, accuracy or consistency . . . ."

In Count III, plaintiffs alleged that defendants

> developed and maintained a policy, practice, custom and usage of hiring, assigning and promoting Park District employees on the basis of race and ethnic background in that, in part, the Park District perpetuated "white" parks and facilities in white communities, to which white employees were assigned in disproportionately high numbers.

It was alleged that defendants had developed and maintained

> "a policy of establishing and perpetuating 'black' and 'Latino' parks and facilities . . . to which blacks are as-

---

[2] On plaintiffs' motion, the court dismissed their claims brought under 42 U.S.C. § 2000(a).

> signed either exclusively or in disproportionately higher numbers. Conversely, blacks and Latinos are routinely, as a matter of policy, practice, custom and usage, denied the opportunity to transfer, be assigned to or be promoted into jobs located in white parks in white communities.

Plaintiffs stated that as a result of this policy, the assignment of administrative, recreational, support and maintenance staff varied substantially from park to park with a high correlation between greater allocation of these resources and predominently white communities, and a similarly high correlation between lower numbers and quality of staff assigned and predominently black and Latino communities. Plaintiffs alleged that as a result, "facilities serving minority communities have substantially fewer experienced staff and personnel of all types than do facilities serving predominently white communities," therefore, plaintiffs

> and others similarly situated, have been forced to resign from the employ of the park district, due to their realization that their opportunities for reassignment, higher pay and promotions were severely limited by reason of defendants' limiting blacks and Latinos to employment, assignment, pay and promotions within the context of black parks.

In Count IV, brought pursuant to 42 U.S.C. § 1983, plaintiffs alleged that as a proximate result of defendants' policy of allocating funds to the parks in a racially and ethnically discriminatory manner, the parks in minority communities were maintained in a dangerous and hazardous condition "with the result that injuries such as those sustained by plaintiffs are frequently sustained by blacks and Latinos who use the said parks and facilities." Reference was made in Count IV to an injury sustained by a minor plaintiff at a pool operated by the Chicago Park District.[3]

---

[3] Count V of the Second Amended complaint, for reasons not pertinent here, was dismissed prior to trial.

At about the same time this case was begun a similar one, *Midwest Community Council, et al. v. Chicago Park District, et al.*, 79 C 3187, was filed by a different group of plaintiffs. It also was a class action suit brought on behalf of Negro residents of certain wards of the City of Chicago. The complaint alleged that the Chicago Park District had "purposefully discriminated against Black citizens on the basis of race in the allocation of recreational resources within the City of Chicago." Because of the similarities between the *Alexander* and *Midwest* cases, an order, pursuant to Rule 42, Fed.R.Civ.P., was entered consolidating them for trial. The court also entered an order providing that while the jury's verdict in the *Alexander* case would be mandatory, the verdict in the *Midwest* case would be advisory. After completion of discovery and disposition of pretrial matters, the cases proceeded to trial.

During the early part of the trial, the court granted *Midwest* plaintiffs' motion to sever Counts II, III and IV of the *Alexander* complaint. Accordingly, trial was had as to the *Midwest* case and Count I of *Alexander*, the count which alleged racial discrimination in the allocation of resources. Before the close of trial, the court granted the *Alexander* plaintiffs' motion to file a third amended complaint to conform to the evidence adduced at trial. The Third Amended Complaint was substantially identical to the Second. After thirty-seven days of hearing evidence over a period of nearly three months and deliberations over a period of five days, the jury returned verdicts in favor of all defendants and against each plaintiff in both cases. The court entered judgment, pursuant to Rule 58, Fed.R.Civ.P., on the verdicts in *Alexander* Shortly thereafter, it made its findings of fact, reached conclusions of law in *Midwest*, and in accordance with the jury's advisory verdict, enterted judgment in favor of all defendants and against all plaintiffs.

Following trial, defendants filed a motion, pursuant to Rule 56, Fed.R.Civ.P., seeking to have summary judgment

entered in their favor on Counts II, III and IV of plaintiffs' Third Amended Complaint, the counts that had not been tried. Defendants contended that the jury's verdict in favor of all defendants and against all plaintiffs in Count I was *res judicata* of all the claims raised in Counts II, III and IV. The court, on September 23, 1984, granted the motion with respect to Count IV, reasoning that:

> the legal basis of plaintiffs' claim under [Count IV] . . ., is that the defendants so administered the Chicago Park District system that the conditions in the parks used predominently by Negroes, Hispanics and poor people became dangerous, causing personal injury to plaintiffs... . The issue whether defendants, during the period in question, administered the Chicago Park District system in a racially discriminatory manner in the allocation of park resources was adjudicated against the plaintiffs by the jury's verdict in favor of all defendants. . . . For this reason, plaintiffs cannot again litigate with defendants the issue of race discrimination in the allocation of park resources within the Chicago Park District system.

The motion, however, was denied with respect to Counts II and III. In so ruling, the court determined that the jury's verdict in Count I was not *res judicata* of the issues raised by the allegations contained in Counts II and III, noting that

> there are material issues of fact to be resolved raised by the allegations of [those counts] and the answers thereto of defendants. Count I, which has been tried, alleged that the Chicago Park District, a municipal corporation, its General Superintendent, and its Commissioners, operated the park system in a manner that discriminated against Negroes, Hispanics, and poor residents of the City of Chicago on the basis of race in the allocation of park resources. Counts II and III . . . allege that the same defendants have denied the plaintiffs named in those counts employment opportunities because of their race, nationality, and the fact that they are poor residents of the City of Chicago.

Counts II and III raised issues distinct from the issue tried in Count I, therefore, defendants were not entitled to summary judgment as a matter of law as to those counts.

Although the motion was denied as to the two counts, an alternative motion for partial summary judgment was granted only to the extent that when Counts II and III are tried,

> plaintiffs will not be permitted, in opening statement, in presentation of evidence, in arguments to the jury, or in instructions to be requested, to either directly or indirectly relitigate with defendants the issue of whether in the administration of the Chicago Park District system, [defendants], discriminated against Negroes, Hispanics and poor people in the allocation of park resources which included finances, facilities, programs, and maintenance.

Finally, the order of September 23, 1984 provided, pursuant to Rule 54(b), Fed.Civ.P., that the judgment with respect to Count I and the summary judgment entered as to Count IV were to be final and, therefore, appealable. The effect of this order, as made clear from the bench (*see e.g.*, Transcript of Proceedings, September 23, 1984 at 7) was to make all orders entered in this case appealable and, depending on how the Court of Appeals ruled, trial of Counts II and III would be affected. To further enable the parties to appeal or cross appeal, Counts II and III were dismissed subject to the right of plaintiffs to file a Fourth Amended Complaint either thirty days from the date of the order or thirty days after the mandate of the Court of Appeals.

Instead of appealing, plaintiffs filed their Fourth Amended Complaint, which is the subject of the present motion to dismiss. The complaint contains six counts. Count I alleges that defendants expended federal financial assistance in a racially and ethnically discriminatory manner in violation of the regulations of the Department of Housing and Urban Development and Interior; in addition or in the alternative, claims are asserted under 42 U.S.C. § 1983.

Counts II, III IV and V, are employment discrimination claims. Count II is in equity for employment discrimination seeking injunctive relief, reinstatement, back pay and damages under the Due Process and Equal Protection Clauses of the United States and Illinois Constitutions, and under 42 U.S.C. § 1983. In this count, plaintiffs, making reference to a civil service examniation administered by defendants, allege that the examination was not reasonably job-related, free of cultural, racial and sexual bias; and that it was not administered under circumstances that assured objectivity, impartiality, accuracy or consistency. This count is substantially identical to Count II of the previous complaint.

Count III is entitled "Employment Discrimination Violative of Departmental Funding Regulations, for which Section 1983 Relief Sought." In this count, plaintiffs incorporate the allegations of Count I which allege that defendants allocated resources to the parks in a racially discriminatory manner and incorporates the allegations in Count II concerning the administration of the civil service examination. Count III seeks the same relief as Count II.

Count IV is brought under the Due Process and Equal Protection Clauses of the United States and Illinois Constitutions, and under 42 U.S.C. § 1983. It alleges that defendants have

> developed and maintained a policy, practice, custom and usage of hiring, assigning and promoting its employees on the basis of race and ethnic background in that, in part, the PARK DISTRICT has perpetuated "white" parks and facilities in white communities, to which white employees are assigned in disproportionately high numbers, and, in part, by excluding blacks and persons of Latino descent from the upper administrative positions in the Park District.

It is then alleged that defendants have a policy of allocating resources to the parks on a racially discriminatory basis, with a

high correlation between allocation of funds and predominently white communities; and that as a result of this policy:

> the assignment of administrative, recreational, support and maintenance staff varies substantially from park to park with a high correlation between greater numbers and higher quality or personnel assigned and predominance of whites in communities served and a similarily high correlation between lower numbers and lower quality of staff assigned and predominence of blacks and persons of Latino descent in the communities served... .
>
> The fact that significantly less funds are allocated to black and Latino parks, and substantially fewer staff assigned to them than to white parks, combined with the policy, custom and practice of defendants of hiring, assigning and paying personnel on a racially and ethnically discriminatory basis, produces the result that black and Latino employees are forced to compete against others for fewer jobs commanding less funds than those available to their white counterparts, which fact has caused defendants to devise such expedients as the "civil service examination" described in Counts II and III hereto for the purpose of reducing the number of the DISTRICT's black and Latino employees... .
>
> As a further result of defendants' aforesaid policy, practice, custom and usae[sic], plaintiffs . . . have been forced to resign from the employ of the PARK DISTRICT, due to their realization that their opportunities for reassignment, higher pay and promotions were severely limited by reason of defendants limiting blacks and Latinos to employment, assignment, pay and promotions within the context of black and Latino parks, or have been wrongfully terminated.

In Count V it is alleged that, contrary to the federal regulations as alleged in Count I, defendants expended federal financial assistance in a racially and ethically discriminatory manner, with the result that certain named plaintiffs and others

similarly situated have been forced to resign from the employ of the Park District,

> due to their realization that their opportunities for reassignment, higher pay, and promotions were severely limited by reason of defendants' limiting blacks and Latinos to employment, assignment, pay and promotions within the context of black and Latino parks, or have been wrongfully terminated.

Finally, in Count VI, plaintiffs again allege that defendants had a policy of expending federal financial assistance in a racially and ethnically discriminatory manner, such that parks in black and Latino communities received substantially less maintenance, staff aid and safety inspections and reviews than parks located in white neighborhoods. As a result,

> substantial hazardous conditions are created and continue to exist in parks located in neighborhoods which serve primarily black, Latino and poor neighborhoods with resultant personal injuries to minority park patrons.

It is then alleged that the

> personal injuries sustained by plaintiffs and others similarly situated were the direct and proximate result of the racially ethnically discriminatory policies of defendants whereby parks and facilities operated by defendants in black, Latino and poor neighborhoods are deliberately poorly maintained, staffed, funded, thereby causing dangerous conditions to exist . . . .

Plaintiffs seek to recover actual and punitive damages.

Defendants have moved to dismiss the entire Fourth Amended Complaint on grounds, among others, of *res judicata* and that the complaint fails to state a claim under 42 U.S.C. § 1983.[4] It is defendants' contention that the jury's verdict on

---

[4] Defendants, raise numerous other grounds for dismissal of the Fourth Amended complaint. Because the court con-

*(Footnote continued on following page.)*

Count I of the Third Amended Complaint, and the summary judgment granted as to Count IV of that complaint, effectively precludes litigation of the entire litany of issues presented in plaintiffs' Fourth Amended Complaint. They also contend that plaintiffs cannot rely on 42 U.S.C. § 1983 to bring what are in effect employment discrimination claims.

## II

Under *res judicata*, or claim preclusion, a prior judgment will bar an identical claim or cause of action from being relitigated. *Harper Plastic, Corp. v. Amoco Chemical Corp.*, 657 F.2d 939, 945 (7th Cir. 1981). The doctrine also operates to bar all claims or causes of action which could have been asserted by the parties in the earlier case. *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1949); *Morris v. Jones*, 329 U.S. 545, 552 (1947). It is a doctrine "founded upon the generally recognized public policy that there must be some end to litigation and that when one appears in court to present his case, is fully heard, and contested issues decided against him, he may not later renew the litigation." MOORES FEDERAL PRACTICE, ¶ 405 [1], pp. 186-87. The Supreme Court has observed that *res judicata* "has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party . . . and of promoting judicial economy by preventing needless litigation." *Parkline Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979).

The pivotal question presented in this motion is what effect, if any, does the jury's verdict on Count I of the Third Amended Complaint, and the summary judgment entered as to

---

*(Footnote continued from preceding page.)*

cludes that the reasons discussed in this memorandum are dispositive of the motion, it will not address the other grounds for dismissal raised in defendants' motion.

Count IV of that complaint, have on each of the six counts of the Fourth Amended Complaint. In order for these judgments to have a preclusive effect, three threshold requirements must be met: (1) there must be an identity of parties; (2) there must be an indentity of causes of action; and (3) there must be a final judgment on the merits. *Local 1006, American Federation of State, County and Municipal Employees v. Wurf*, 558 F. Supp. 230, 234 (N.D.Ill. 1982). There is no dispute that the parties to this action are the same in both the Third and Fourth Amended Complaints; therefore, the court need only concern itself with the last two requirments.

Clearly Count I of the Fourth Amended Complaint, the allocation of resouces count, is the same cause of action as was previously tried. The fact that these counts seek relief under different federal statutes and regulations does not indicate that they are different causes of action. "The primary test for determining if two suits are premised on the same causes of action is whether both suits arise out of the same basic factual situations." *Himel v. Continental National Bank & Trust Company*, 596 F.2d 205, 209 (7th Cir. 1979). A mere change in the legal theory under which a plaintiff seeks relief does not create a new cause of action. *Shadid v. Oklahoma City*, 494 F.2d 1267, 1268 (10th Cir. 1974). Both counts arise from the same factual setting, namely the manner in which defendants allocated resources to the parks; therefore, these counts are the same causes of action.

In Counts V and VI[5], it is clear that the factual predicate for these claims lies in the allegation that defendants expended

[5] Counts II, III and IV are seperate causes of action. A careful review of these counts disclose that they contain allegations of employment discrimination which are not factually predicated on defendants' alleged policy of allocating resources to the parks in a racially discriminatory manner. Different facts and evidence than produced in the previous trial would be needed to sustain these claims.

federal funds to the parks in a racially discriminatory manner. Because they are premised on the same allegation as was tried, Counts V and VI are the same causes of action as Count I of the Third Amended Complaint.

It is plaintiffs' contention that the claim for employment discrimination contained in Count V and the personal injury claims in Count VI should not be barred because these are not the same causes of action as the racial discrimination in the allocation of resources claim. The court disagrees. As the Seventh Circuit has noted in discussing what constitutes a cause of action for *res judicata* purposes:

> A cause of action consists of a single core of operative facts, which give the plaintiff a right to seek redress for the wrong concerned. Even though one group of facts may give rise to different claims for relief, upon different theories of recovery, there remains a single cause of action. If the same facts are essential to the maintenance of both proceedings, or the same evidence is needed to sustain both, then there is identity between the allegedy different causes of action asserted, and *res judicata* bars the latter action.

*Lee v. City of Peoria*, 685 F.2d 196, 200 (7th Cir. 1982).

The same facts are essential and the same evidence is needed to sustain both the racial discrimination in the allocation of resources claim of Count I of the Third Amended Complaint and Counts V and VI of the Fourth Amended Complaint. For example, in Count VI plaintiffs allege that the "injuries sustained by [them] were the direct and proximate result of the racially and ethnically discriminatory policies of defendants" in allocating resources to the parks. Because plaintiffs, by there own allegations, must first prove that defendants allocated resources in a discriminatory manner in order to show that defendants' actions were the direct and proximate cause of plaintiffs' injuries, the same facts and evidence as produced in Count I of the Third Amended

Complaint are needed to sustain the personal injury count. Similarily, in Count V, as pled by plaintiffs, the employment discrimination alleged is the result of defendants' policy of allocating resources to the parks in a discrimnatory manner. Therefore, "there is identity between the allegedly different causes of action asserted, and *res judicata* bars [litigation of Counts V and VI.]" *Lee v. City of Peoria, supra.*

Plaintiffs also contend that *res judicata* does not apply to the Fourth Amended Complaint because the judgments entered were not "final." It is the plaintiffs' position that the court's certification of the judgment was contingent on plaintiffs' right to appeal. There being no appeal, they argue, there can be no final judgment and hence no application of *res judicata.* Plaintiffs also point out that the certification under Rule 54 was not proper because the court never made an express determination that "there is no just reason for delay" as required by the rule. Thus, they contend, the judgments remain interlocutory and have no preclusive effects.

Although the court does not agree with plaintiffs' interpretation of the order or that the Rule 54 certification was inadequate to make the judgments appealable; *assuming arguendo,* that plaintiff is correct, the judgments still would have the requisite "finality" needed to to give them a preclusive effect on the Fourth Amended Complaint. As a general rule, principles of *res judicata* and collateral estoppel do not pertain to non-final orders and judgments. WRIGHT, MILLIER & COPPER, 18 Federal Practice and Procedure: Jurisdiction § 4432. Under some circumstance, however, "an interlocutory order may be final for *res judicata* purposes if 'in respect to some particular it makes a final disposition, in which case it is *res judicata* as to that one matter.' " *Aiello v. City of Wilmington,* 470 F. Supp. 414, 419 (D.Del. 1979). At least two courts of appeals have held that finality for *res judicata* purposes is not co-extensive with the finality needed to perfect an appeal:

> Whether a judgment, not "final" in the sense of 28 U.S.C. § 1291, ought nevertheless be considered "final" in the sense of precluding further litigation of the same issues, turns upon such factors as the nature of the decision (i.e. that it was not avowedly tentative), the adequacy of the hearing and the opportunity for review. "Finality" in the context here relevant may mean little more than the litigation of a particular issue has reached such a stage that a court sees no really good reason for permitting it to be litigated again.

*Lummus Co. v. Commonwealth Oil Refining Co.*, 297 F.2d 80, 89 (2d Cir. 1961), *cert. denied*, 368 U.S. 986 (1962); *accord*, *Pye v. Department of Transportation*, 513 F.2d 290, 292 (5th Cir. 1975). Applying this flexible approach, it is clear that the judgment rendered on Counts I and IV of the Third Amended Complaint have the "finality" needed to give them preclusive effect. There is no reason whatsoever to permit plaintiffs to relitigate these claims. There was an extensive trial had, encompassing thirty-seven days of hearing evidence over a three-month period, with a jury deliberating over a five-day period and entering a verdict against plaintiffs. They were given a fair and adequate opportunity to litigate their claim. The jury's verdict as to Count I of the Third Amended Complaint and the summary judgment entered on Count IV of that complaint have to be considered "final" for the purposes of precluding Counts I, V and VI of the Fourth Amended Complaint. Therefore; even if plaintiffs are correct that the judgments are not appealable, the court concludes that they "fall into the limited category of non-appealable orders that may be deemed final for *res judicata* purposes." *Aiello v. City of Wilmington*, 470 F. Supp. at 420. Accordingly, Counts I, V and VI of the Fourth Amended Complaint are barred by res judicata.

## III

Defendants next contend that if any counts of the Fourth Amended Complaint are not barred by *res judicata* then they must be dismissed on other grounds. They vehemently argue that plaintiffs cannot bring an action under Section 1983 against these state officials for employment discrimination. It is their position that Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, provides the exclusive remedy for employment discrimination and plaintiffs cannot side-step the detailed and comprehensive administrative and judicial schemes of Title VII by filing what is essentially a Title VII action under the heading of Section 1983. They contend, citing *Great American Federal Savings and Loan Association v. Novotony*, 442 U.S. 336 (1979), that Title VII effectivly displaces other causes of action, such as Section 1983 and 1985(3), and is the exclusive remedy for violations of substanative rights in the context of employment discrimination. In *Novotony*, the Court held that a "deprivation of a right created by Title VII cannot be a basis for a cause of action under Section 1985(3)." *Id.* at 378.

While defendants admit that the Supreme Court has yet to pass on the question presented here, of the viability of a Section 1983 action to redress employment discrimination claims against state officials, they direct the court's attention to *Brown v. General Services Administration*, 425 U.S. 820 (1976), where it was held that the exclusive remedy for employment discrimination by federal employees is Title VII. In reaching this conclusions, the Court found that both the legislative history and statutory composition of Title VII envinced a congressional intent that it be the exclusive, preemptive administrative and judicial scheme for redress of employment discrimination by federal employees. While *Brown* only applied to cases of employment discrimination by federal officials, and Section 1983 does not apply to actions by federal officials, defendants urge the court to adopt the rationale of *Brown*, arguing no distinction should be made between actions by federal and state

officials. They insist that to allow a suit against state officials for employment discrimination under Section 1983 would permit a plaintiff to eliminate the detailed administrative scheme of Title VII "by the simple expedient of putting a different label on [the] pleadings." *Brown v. Government Services Administration, supra* at 833, *quoting Preiser v. Rodriquez*, 411 U.S. 475, 489-90 (1973).

Similarly, defendants cite *Middlesex County Sewerage Authority v. Sea Clammers*, 453 U.S. 1 (1980), where the Court concluded that the comprehensive and detailed schemes contained in certain federal environmental laws preclude an action under Section 1983:

> When the remedial devices provided in a particular Act are sufficiently comprehensive, they may suffice to demonstrate a congressional intent to preclude the remedy of suits under § 1983. As Justice Stewart, who later joined the majority in *Maine v. Thiboutot*, stated in *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 673, n.2 (1979) (dissenting opinion), when "a state official is alleged to have violated a stautue which provides its own comprehensive enforcement scheme, the requirements of that enforcement procedure may not be bypassed by bringing suit directly under § 1983." .... We therefore conclude that the existance of these express remedies [in the federal environmental laws in issue] demonstrates not only that Congress intended to foreclose implied private actions but also that it intended to supplant any remedy that otherwise would be available under § 1983.

*Middlesex County Sewerage Authority v. Sea Clammers*, 453 U.S. 1, 20-21 (1980). The result of *Novotny*, *Brown*, and *Sea Clammers*, defendants maintain, and this court agrees, is that Title VII with its exhaustive system for remedying employment discrimination is an exclusive remedy.

When the parties briefed this question they were unaided by the recent decision of Judge Warren of the Eastern District

of Wisconsin in *Torres v. Wisconsin Department of Health and Social Services*, ____ F.Supp. ____, 83-C-627, 628, 629 (E.D.Wisc. August 6, 1984) in which he addressed this question. *Torres* was an action by male employees of the Wisconsin Department of Health and Social Services challenging the validity of a bona fide occupational qualification plan of the department. The suit alleged that the creation and implementation of the plan was arbitrary and capricious; that it discriminated against males on the basis of sex; and that it had an adverse impact on plaintiffs in that they had been demoted. Plaintiffs brought suit under Title VII challenging the validity of the plan; under 42 U.S.C §§ 1985 and 1986 based on an alleged conspiracy among the defendants to interfere with plaintiffs' civil rights; and under 42 U.S.C § 1983 based on actions of the individual superintendent in implementing the bona fide occupational qualification plan. In a well reasoned opinion, Judge Warren dismissed plaintiffs claims for relief under Sections 1983, 1985 and 1986, concluding that "Congress intended that Title VII of the Civil Rights Act of 1964 provide the exclusive set of remedies for discrimination in employment."

The court agrees with the reasoning and the result in *Torres*. As was noted by Judge Warren:

> The upshot of [*Novotny*, *Brown*, *Sea Clammers* and *Prieiser* v. *Rodriguez*, 411 U.S. 475 (1973)]—and the central principle that animates today's ruling—is that a reasonably elaborate, structurally-intergrated system for remedying wrongs in the public domain, such as that established by Title VII . . . , should provide the exclusive means of enforcement of those rights specifically set forth therein. In a case like the present, where plaintiffs' so-called constitutional allegations are so tied up with their cause of action under Title VII that they are, in the Court's view, nearly unidentifiable as discrete claims, the principle articulated in *Novotny*, *Brown*, *Preiser*, and *Sea Clammers* is wisely followed.

Id. at ____, slip op. at 17-18.

The remaining counts in plaintiffs' complaint are all, in the court's view, claims for employment discrimination which are actionable under Title VII. Adopting the reasoning in *Torres*, plaintiffs cannot bring an action under Section 1983 to redress what are in effect Title VII claims. To allow plaintiffs to seek relief under Section 1983 would permit them to completely bypass the comprehensive administrative scheme of Title VII "by the simple expedient of putting a different label on [the] pleadings." Therefore, the court concludes that the remaining counts of the Fourth Amended Complaint, namely Counts II, III and IV, do not state a claim for relief under 42 U.S.C. § 1983.

## IV

In conclusion, for the reasons stated above, defendants' motion to dismiss is granted as to all counts of plaintiffs' Fourth Amended Complaint and this suit is dismissed in its entirety.

So ordered.

/s/ GEORGE N. LEIGHTON
George N. Leighton
United States District Judge

Dated: Oct. 18, 1984

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division

Name of Presiding Judge, Honorable George N. Leighton

Cause No. 79 C 2242 Date September 23, 1983

Title of Cause Silas J. Alexander, et al v. Chicago Park District, et al

Brief Statement of Motion Order ruling on plaintiffs' motion made pursuant to Rule 59, Fed. R. Civ. P., for amendment of judgment or for a new trial

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel _____

_____

Representing _____

_____

Names and Addresses of other counsel entitled to notice and names of parties they represent. _____

_____

Reserve space below for notations by minute clerk

Plaintiffs' motion made pursuant to Rule 59, Fed. R. Civ. P. for an order amending the judgment or for a new trial having been considered by the Court, it is ordered that the motion be denied. The reasons for this ruling are set forth in the Court's Memorandum filed herewith this day.

Leighton, *J.*

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division

Name of Presiding Judge. Honorable George N. Leighton

Cause No. 79 C 2242 Date September 23. 1983

Title of Cause Silas J. Alexander, et al., vs. Chicago Park District, et al.

Brief Statement of Motion Order ruling on defendants' motion for summary judgment

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (seperate lists may be appended).

Names and Addresses of moving counsel _____

_____

_____

Representing _____

_____

Names and Addresses of other counsel entitled to notice and names of parties they represent _____

_____

Reserve space below for notations by minute clerk

Based on the reasons stated in the Court's Memorandum filed this day, defendants motion for summary judgment as to plaintiffs' Counts II, III, and IV of the Third Amended Complaint is denied as to Counts II and III but granted as to Count IV. Further, in conformance with Rule 54(a), Fed. R. Civ. Proc., in order to make final all rulings in this case, and allow the parties to appeal or cross-appeal, Counts II and III of the Third Amended Complaint is dismissed, with leave granted plaintiffs to file a Fourth Amended Complaint either 30 days

from the date of this order or 30 days from the docketing in this court of the mandate of the Court of Appeals from any appeal or cross appeal taken by any party hereto. The right reserved to plaintiffs to file the amended complaint shall be subject to defendants moving against such proposed pleading.

Leighton, *J.*

IN THE UNITED STATES DISTRICT COURT

Northern District of Illinois
Eastern Division

SILAS J. ALEXANDER, et al.,
*Plaintiffs,*

*vs.*

CHICAGO PARK DISTRICT, et al.,
*Defendants.*

No. 79 C 2242
Before the Honorable
**George N. Leighton**
U. S. District Judge

**Memorandum**

This cause is before the court on a motion by defendants pursuant to Rule 56, Fed. R. Civ. P., in which they ask this court to enter judgment in their favor as to Counts II, III, and IV of plaintiffs' Third Amended Complaint. The motion is attached to this Memorandum as Appendix A; and in order to avoid unnecessary repetition, the allegations, the grounds, and the arguments in support of the motion, are incorporated by reference as if set forth herein *haec verba.*

Counts II, III, and IV of plaintiffs' Third Amended Complaint, the claims they assert, and the allegations made therein, are attached to this Memorandum as Appendix B. In order to avoid unnecessary repetition, the allegations of those counts and the claims they assert are incorporated by reference as if set forth herein *haec verba.*

This civil rights class suit was consolidated with another, Midwest Community Council, Inc., 79 C 3187, an order having been entered prior to trial providing that the verdict in this case would be mandatory while the verdict in *Midwest Community Council, Inc.* was to be advisory. After 37 days of hearing evidence over a period of nearly three months, and deliberation over a period of five days, the jury returned a verdict in favor of

all defendants and against each plaintiff. A copy of that verdict is attached to this memorandum as Appendix C; and in order to avoid unnecessary repetition, it is incorporated by reference as if set forth herein *haec verba*.

The jury trial was by order of this court restricted to Count I of plaintiffs' Second Amended Complaint, a count which in substance is identical with Coun I of their Third Amended Complaint. Count I of the Second Amended Complaint is attached to this Memorandum as Appendix D; and in order to avoid unnecessary repetition the allegations and the claims made therein are incorporated by reference as if set forth in this herein *haec* verba.

The court has heard the parties and their submissions in support of and in opposition to defendants' motion for summary judgment. Being fully advised concerning their respective positions, it rules as follows:

1. Defendants' motion for summary judgment on Counts II and III is denied. The jury's verdict in favor of all defendants and against each plaintiff in Count I of the Second Amended Complaint is not res judicata of the issues raised by the allegations contained in Counts II and III of the Third Amended Complaint. There are material issues of fact to be resolved raised by the allegations of those counts and the answers thereto of the defendants. Count I, which has been tried, alleged that the Chicago Park District, a municipal corporation, its General Superintendent, and its Commissioners, operated the park system in a manner that discriminated against Negroes, Hispanics, and poor residents of the City of Chicago on the basis of race in the allocation of park recreational resources. Counts II and III of the Third Amended Complaint allege that the same defendants have denied the plaintiffs named in those counts employment opportunities because of their race, nationalty, and the fact that they are poor residents of the City of Chicago. For these reasons, as to

Counts I and II of the Third Amended Complaint, defendants are not entitled to judgment as a matter of law under Rule 56, Fed. R. Civ. P.

2. Defendants alternative motion for partial summary judgment as to individual liability claims in Counts II and III is denied. The record in this case lacks the necessary evidentiary support for the contention that the individual commissioners defendants did nothing more than exercise legislative functions in connection with the administration of the property and business of the Chicago Park District, a municipal corporation. Therefore, the commissioners defendants are not entitled to judgment as a matter of law on plaintiffs' individual liability claims against them alleged in Counts II and III of the Third Amended Complaint.

3. Defendants' motion for summary judgment as to Count IV of the Third Amended Complaint is granted and judgment is entered in favor of all defendants and against each plaintiff. This suit as to Count IV is dismissed. The legal basis of plaintiffs' claim under this count, asserted pursuant to 42 U.S.C. § 1983, is that the defendants so administered the Chicago Park District system that the conditions in the parks used predominantly by Negroes, Hispanics and poor people became dangerous, causing personal injury to the plaintiffs in Count IV of the Third Amended Complaint. The issue whether defendants, during the period in question, administered the Chicago Park District system in a racially discriminatory manner in the allocation of park resources was adjudicated against the plaintiffs by the jury's verdict in favor of all defendants and against all of the plaintiffs in Count I of the Second Amended Complaint. For this reason, plaintiffs cannot again litigate with defendants the issue of race discrimination in the allocation of park resources within the Chicago Park District system. Accordingly, defendants are entitled to judgment as a matter of law as to Count IV of the Third Amended Complaint.

4. Defendants' alternative motion for partial summary judgment will be granted only to the extent of providing that when Counts II and III of the Third Amended Complaint is tried, plaintiffs will not be permitted, in opening statement, in the presentation of evidence, in arguments to the jury, or in instructions to be requested, to either directly or indirectly relitigate with defendants the issue whether in the administration of the Chicago Park District system the Chicago Park District, its General Superintendent, and its commissioners, discriminated against Negroes, Hispanics, and poor people in the allocation of park resources which included finances, facilities, programs, and maintenance.

5. In order to enable the parties to this cause to appeal or cross appeal, and in conformance with Rule 54(b), Fed. R. Civ. P., Counts II and III of the Third Amended Complaint are dismissed, subject to the right of plaintiffs to file a Fourth Amended Complaint either thirty (30) days after this date or thirty (30) days after the mandate of the Court of Appeals from any appeal or cross appeal in this case is docketed with the Clerk of this court.

So ordered.

/s/ GEORGE N. LEIGHTON
George N. Leighton,
United States District Judge

Dated: Sep. 23, 1983

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division

Name of Presiding Judge, Honorable George N. Leighton

Cause No. 79C2242 Date Aug. 17, 1983

Title of Cause Alexander *vs* Chicago Park District

Brief Statement of Motion verdict

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (seperate lists may be appended).

Names and Addresses of moving counsel _____

_____

_____

Representing _____

_____

Names and Addresses of other counsel entitled to notice and names of parties they represent. _____

_____

Reserve space below for notations by minute clerk

Filed verdict with regard to Count I, we, the jury, find for all of the defendants and against each of the plaintiffs. Enter judgment on the verdict. Jury discharged.

Leighton, *J.*

## JUDGMENT—ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

September 19, 1985

Before

Hon. WALTER J. CUMMINGS, *Chief Judge*

Hon. JESSE E. ESCHBACH, *Circuit Judge*

Hon. EUGENE A. WRIGHT, *Senior Circuit Judge**

SILAS ALEXANDER, et al.,
*Plaintiffs-Appellants,*

No. 84-2995 vs.

CHICAGO PARK DISTRICT, et al.,
*Defendants-Appellees.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 79 C 2242

**George N. Leighton,** Judge.

This cause was heard on the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED IN PART and REVERSED IN PART, in accordance with the opinion of this Court filed this date. Each party is to bear its own costs on appeal.

---

* The Honorable Eugene A. Wright, Senior Circuit Judge of the United States Court of Appeals for the Ninth Circuit, is sitting by designation.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SILAS J. ALEXANDER, KAREN TURNER, RENEE BRADFORD, LILLIAN SCHREAN, JOEL ALEXANDER, EARLINE OGLESBY, MARTHA McGEE, ALTHEA TUCKER, ROSEMARY GARRETT, LATOSKI McCARTHY DILLON, BEVERLY GRAY, individually and as mother of ANTHONY GRAY, a minor, ARLENE GASTON, individually and as mother of WILLIE GASTON, a minor, ANGEL GOMEZ, individually and as father of JUAN GOMEZ, a minor, LUIS DIAZ, LUIS FLORES, COMITE LATINO, CLARA EVANS, CHRISTOPHER DELANO BARNETT, OSCAR WELLS, TERRY LEE FISHER, AGNES BERNAUGH, WILLIAM HALL, CHARLES ADKINS, and NATALIE LYLE, on behalf of themselves and others similarly situated,

*Plaintiffs,*

*vs.*

CHICAGO PARK DISTRICT, PATRICK O'MALLEY, THEODORE JONES, JEAN FORAN, WILLIAM A. LEE, SYDNEY MAROVITZ, IOLA McGOWAN, WILLIAM C. BARTHOLOMAY, and RAYMOND F. SIMON, as Commissioners of the Chicago Park District and in their individual capacities; JOHN McHUGH, in his representative capacity only; EDMUND KELLY, as General Superintendent of the Chicago Park District, and individually,

*Defendants.*

NO: 79 C 2242

**FOURTH AMENDED COMPLAINT IN SIX COUNTS**

## COUNT I—VIOLATIONS OF DEPARTMENTAL FUNDING REGULATIONS, FOR WHICH SECTION 1983 RELIEF SOUGHT

1. This claim is brought by the plaintiffs to enforce the regulations of the Department of Housing and Urban Development, 24 C.F.R. 570.60 *et. seq.*, and of the Department of the Interior, 43 C.F.R. 17.1 *et. seq.*, relating to non-discrimination in federally assisted programs and activities and pursuant to 42 U.S.C. Section 1983, for the relief granted thereby.

2. The court has jurisdiction of this claim under 28 U.S.C. 1343(3).

3. Plaintiffs in this Count I are SILAS J. ALEXANDER, KAREN TURNER, RENEÉ BRADFORD, LILLIAN SCHREAN, JOEL ALEXANDER, EARLINE OGLESBY, MARTHA MC GEE, ALTHEA TUCKER, ROSEMARY GARRETT, LATOSKI MC CARTHY DILLON, BEVERLY GRAY, individually and as mother of ANTHONY GRAY, a minor, ARLENE GASTON, individually and as mother of WILLIE GASTON, a minor, ANGEL GOMEZ, individually and as father of JUAN GOMEZ, a minor, LUIS DIAZ, LUIS FLORES, COMITE LATINO, CLARA EVANS, CHRISTOPHER DELANO BARNETT, OSCAR WELLS, TERRY LEE FISHER, AGNES BERNAUGH, WILLIAM HALL, CHARLES ADKINS and NATALIE LYLE. Each individual plaintiff is a black, Latino or poor resident of the City of Chicago. COMITE LATINO is an organization whose purposes include among others, securing the rights of Latino persons to fair and non-discriminatory municipal services, housing and employment opportunities.

4. Each plaintiff sues on his or her own behalf and on behalf of all other black, Latino and poor residents of Chicago who are injured by the various acts of discrimination alleged herein. This is a proper class action under Rule 23(b)(2), Federal Rules of Civil Procedure. The class is so numerous that

joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the named plaintiffs will fairly and adequately protect the interests of the class. In addition, the defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

5. Defendant CHICAGO PARK DISTRICT is a municipal corporation. Defendants O'MALLEY, LEE, MAROVITZ, FORAN and JONES were at all times pertinent hereto prior to May 1, 1979, Commissioners of the PARK DISTRICT, charged by law with the ultimate responsibility for the conduct of its affairs. Defendant SIMON was a Commissioner from 1979 to 1982. Defendants BARTHOLOMAY, MAROVITZ, MC GOWAN, LEE and MC HUGH are currently Commissioners of the CHICAGO PARK DISTRICT. Defendant KELLY was at all times pertinent hereto and is currently General Superintendent of the PARK DISTRICT.

6. Defendants O'MALLEY, LEE, MAROVITZ, FORAN, JONES, BARTHOLOMAY, MC GOWAN, LEE, SIMON and KELLY are each being sued in their individual and representative capacities. Defendant MC HUGH is being sued only in his representative capacity.

7. The defendant CHICAGO PARK DISTRICT, through its Commissioners and officers, is charged by law with the duty "to manage and control the officers and property of such DISTRICT". (Ill. Rev. Stat., Chapter 105, Section 8-1).

8. Pursuant to its powers the defendant PARK DISTRICT maintains and operates park and park facilities in various parts of the City of Chicago, develops and administers programs for the various parks, assigns staff and personnel, provides funding and police protection and promulgates ordinances and resolutions controlling the operation and use of the parks and facilities.

9. The defendant CHICAGO PARK DISTRICT received federal financial assistance from about 1970 to 1980 for the use and operation of its park system, said federal assistance being authorized pursuant to certain federal statutes including, *inter alia*, 42 U.S.C. Section 5301 *et. seq.*; and 16 U.S.C. Section 460 1 (1) *et seq.*

10. The defendant CHICAGO PARK DISTRICT as a federally funded program or activity is subject to the provisions of 24 C.F.R. 570.600 *et. seq.* and 43 C.F.R. 17.1 *et. seq.*

11. The defendant CHICAGO PARK DISTRICT, and its Commissioners and officers have expended said federal financial assistance in a racially and ethnically discriminatory manner in violation of the regulations of the Departments of Housing and Urban Development and Interior and 42 U.S.C. Section 1983.

12. Defendants have pursued and continue to pursue policies and practices which discriminate against black, Latino and poor residents of the City of Chicago. These discriminatory policies and practices include but are not limited to:

(a) providing substantially fewer recreational facilities to parks located in predominantly black, Latino and poor communities as opposed to those located in predominantly white communities;

(b) providing substantially fewer instructional programs at parks located in predominantly black, Latino and poor communities as opposed to those located in predominantly white communities;

(c) providing substantially fewer recreational staff to parks located in predominantly black, Latino and poor communities as opposed to those located in predominantly white communities; and

(d) providing substantially less maintenance to parks located in predominantly black, Latino and poor communities as opposed to those located in predominantly white communities.

13. The injury to the plaintiffs herein and to the members of their class as a result of the discriminatory practices hereinbefore described is irreparable and plaintiffs and the members of their class will continue to be irreparably injured unless the relief requested by this Complaint is promptly granted. Any other relief to which these plaintiffs and members of their class might be remitted would be attended by such uncertainties and delay as to be a denial of substantial relief.

WHEREFORE, plaintiffs respectfully request:

That this court enter a judgment declaring that defendants' policies and practices have been and continue to be in violation of 24 C.F.R. 570.600 *et. seq.* and 43 C.F.R. 17.1 *et. seq.*, and award to plaintiffs such relief as the law, including but not limited to 42 U.S.C. Section 1983 provides, including that:

(a) Defendants be permanently enjoined from continuing to pursue the discriminatory practices complained of;

(b) Defendants be ordered to submit a plan to this court which would correct the effects of their past violations of federal law;

(c) Defendants pay costs and attorneys' fees; and

(d) the court grant plaintiffs such other relief as the interests of justice may require.

## COUNT II—EMPLOYMENT DISCRIMINATION VIOLATIVE OF CONSTITUTION AND SUBSTANTIVE PROVISIONS OF 42 U.S.C. 1983

14. This is a claim in equity for employment discrimination seeking injunctive relief, reinstatement, back-pay and damages, brought under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, Article I, Section 2 of the Illinois Constitution, and 42 U.S.C. 1983.

15. Plaintiffs in this Count II are EARLINE OGLESBY, MARTHA MC GEE, ALTHEA TUCKER, ROSEMARY GARRETT, CHRISTOPHER DELANO BARNETT and TERRY LEE FISHER. Each plaintiff sues on his or her own behalf and on behalf of all other black residents of Chicago who are injured by the various acts of discrimination alleged herein. This is a proper class action under Rule 23(b)(2), Federal Rules of Civil Procedure. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the named plaintiffs will fairly and adequately protect the interests of the class. In addition, the defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

16. Defendants in this Count II are the CHICAGO PARK DISTRICT, O'MALLEY, JONES, FORAN, LEE, MAROVITZ, MC GOWAN, SIMON, KELLY AND BARTHOLOMAY, in both their individual and representative capacities, and MC HUGH in his representative capacity only.

17. The defendant CHICAGO PARK DISTRICT, through its Commissioners and officers, is charged by law with the duty "to manage and control the officers and property of such DISTRICT" (Ill. Rev. Stat., Chapter 106, Section 8-1), in the discharge of which governmental function the PARK DISTRICT is subject to the guarantees of due process and equal protection of the laws provided by the Fourteenth Amendment to the United States Constitution, and to the provisions of Article I, Section 2 of the Illinois Constitution which requires that "no person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws".

18. As of November 1, 1977 and on the date of filing this Complaint the defendant PARK DISTRICT included among its job classifications the title "physical instructor", and within

that job classification differentiated between persons employed as "monthly" and "hourly" personnel. Monthly personnel are salaried employees entitled, among other things, to full-time employment, to accrue vacation, sick leave, seniority and pension rights, and are paid at rates significantly higher than hourly personnel, whose hours of employment are varied at the discretion of the PARK DISTRICT, who accrue no vacation, sick leave, seniority or pension rights, and who are paid at rates significantly lower than for monthly personnel.

19. Plaintiffs MC GEE, TUCKER, GARRETT, FISHER, and others similarly situated were, on November 1, 1977 and had been for several years before, employed by the PARK DISTRICT as physical instructors within the sub-classification of "monthly" personnel. Plaintiff OGLESBY and others similarly situated were on November 1, 1977, and had been for several years before, employed by the PARK DISTRICT as physical instructors within the sub-classification of "hourly" personnel. Plaintiff BARNETT immediately prior to examination was employed by the PARK DISTRICT as a "physical instructor". On the date of the examination plaintiff BARNETT was employed by the PARK DISTRICT as a "recreation leader" and was compensated as an "hourly" employee.

20. On or about November 10, 1977 plaintiffs were notified by defendants that a "civil service examination" would be administered to plaintiffs and others similarly situated on or about the following December 10, 1977 and that successful taking of the examination would be the basis upon which physical instructors would obtain or retain job security benefits and pay preferences in future. Plaintiffs were further informed that the examination would consist of two parts, the first written and the second "practical", and further, that the two portions of the examination would be administered on different days, with the written portion to be given at a later date only to persons who would be notified that they had successfully passed the written examination.

21. Plaintiffs took the written portion of the examination on or about December 10, 1977, at Whitney Young High School in Chicago. The written examination itself consisted of two parts, the first substantially an intelligence quotient test, and the second substantially a test of technical knowledge. Neither test was in fact job-related and neither was reasonably calculated to identify and determine the presence or absence in the persons tested of those skills required to function in the job of physical instructor, which job plaintiffs had been successfully performing for a number of years with satisfactory ratings from their superiors.

22. Plaintiffs were notified during January, 1977 that the "practical" examination would be administered during February, 1978, and proceeded to take that examination in February, 1978 at the Whitney Young High School. The practical examination was itself divided into two parts, the first of which involved answering several verbal questions having, at best, a tangential relationship to the knowledge required to perform the job of physical instructor. In the second part of the examination many of the examinees were required to demonstrate limited skills in certain designated activities at various "stations" set up for that purpose, which activities included, for example, serving a volleyball and shooting a basketball.

23. The attitudes and actions of the PARK DISTRICT personnel who administered both the written and the practical examinations were characterized by levity and lack of serious concern over consistency, objectivity or accuracy of evaluation of the examinations. The monitors and examiners were in all cases supervisory level PARK DISTRICT employees who, in many cases, were personally acquainted with and friends of the persons examined by them. Further, no responsible steps were taken by the defendants to eliminate cultural or racial bias or favoritism, or to assure objectivity, accuracy and consistency in administering and evaluating the tests, nor were responsible steps taken to assure that the examination was appropriately job-related.

24. During May, 1978 plaintiffs MC GEE, TUCKER, GARRETT, FISHER and OGLESBY were notified that they had failed the examination. Plaintiffs, however, continued to perform their jobs as "monthly" and "hourly" physical instructors, respectively. Plaintiff BARNETT was notified that he passed the examination.

25. On or about August 10, 1978 plaintiffs MC GEE, TUCKER, GARRETT and FISHER, all "monthly" salaried physical instructors entitled to full benefits, were notified by defendants that they were terminated and that upon completing work the following day, they should begin their vacations and not thereafter report to work. Plaintiff OGLESBY, who was an "hourly" physical instructor and who also had been notified in May of her failure to pass the examination, was not terminated but continued to be employed by the defendants performing the job of physical instructor, but accruing no benefits, vacation or pension rights, and being entitled to no job security. Plaintiff BARNETT was retained as an "hourly recreational leader".

26. A disproportionately high number of the physical instructors terminated for "lack of occupational proficiency" by reason of their purported failure to pass the "civil service examination" were monthly salaried employees entitled to benefits. A disproportionately high number of those so terminated were black, and a disproportionately high number of those were female.

27. Since August, 1978, defendants have retained plaintiff OGLESBY and others similarly situated, who also "failed" the examination, as hourly physical instructors, and have hired additional hourly physical instructors and rehired previous monthly physical instructors as hourly physical instructors, among both categories of whom blacks are a disproportionately high number. Defendants have further discriminated during the period 1978 to 1981 by hiring and retaining a majority of white persons for the position of "*Special Recreation Activity Instructor*", for which no "civil service examination" is required.

28. Since November, 1977, by means of an examination not reasonably job-related, not reasonably free of cultural, racial and sexual bias, and administered under such circumstances as not to assure objectivity, impartiality, accuracy or consistency, defendants have engaged in a pattern of behavior evincing a design and intent to (1) eliminate large numbers of black salaried physical instructors entitled to job benefits; (2) of those retained or rehired, to eliminate their entitlement to job benefits and security, (3) to replace such terminated or demoted black employees with employees disproportionately white, to whom job benefits and security are provided in disproportionate numbers.

29. By reason of the aforesaid behavior of defendants, plaintiffs MC GEE, TUCKER, GARRETT, FISHER and others similarly situated have been discriminated against and wrongfully terminated from their jobs, have been deprived of their property without due process of law and have been denied the equal protection of the laws, all in violation of the Constitution and Laws of the United States and the State of Illinois.

30. By reason of the aforesaid behavior of defendants, plaintiffs OGLESBY, BARNETT and others similarly situated have been discriminated against and (1) wrongfully paid less than others performing the same work, with similar skills, and (2) denied benefits, including accrual of vacation, pension rights, sick leave and pension benefits provided to others performing the same work. Plaintiffs OGLESBY, BARNETT and others similarly situated have as a result been deprived of property without due process and denied the equal protection of the laws, all in violation of the Constitution and Laws of the United States and the State of Illinois.

31. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged and this suit for injunctive relief, reinstatement, back pay and damages is the only means of securing adequate relief. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendants' policies, practices, customs and usages of discrimination against blacks.

WHEREFORE, plaintiffs respectfully request that this Court enter a temporary injunction, of the scope outlined below, advance this case on the docket, order a speedy hearing at the earliest practicable date, cause the case to be in every way expedited, and upon such hearing:

(a) Permanently enjoin defendants, their officers, agents, successors, employees, attorneys and those acting in concert with defendants from continuing or maintaining the policy and practice of discriminating against plaintiffs and other similarly situated;

(b) Declare the "civil service test" administered to plaintiffs by defendants to be invalid and void, and permanently enjoin defendants from denying plaintiffs employment on the basis of the said test, and denying them status as salaried employees entitled to full benefits;

(c) Reinstate as "monthly" employees entitled to all benfits plaintiffs MC GEE, TUCKER, GARRETT, FISHER and others similarly situated, and award them back pay and benefits for the period from their wrongful termination to the date of the Court's remedial order herein;

(d) Order that plaintiff OGLESBY and others similarly situated be accorded status as salaried physical instructors entitled to full benefits, effective retroactively to the date determined by the Court to be the date, in each case, when the status should have been accorded them;

(e) Order that plaintiff BARNETT and others similarly situated be awarded back pay retroactively for the period beginning with the date when they should have been appointed and paid as physical instructor.

(f) Award plaintiffs their costs, expenses and attorneys' fees herein and such other and additional relief as may appear reasonable and just.

## COUNT III—EMPLOYMENT DISCRIMINATION VIOLATIVE OF DEPARTMENT FUNDING REGULATIONS, FOR WHICH SECTION 1983 RELIEF SOUGHT

32.-33. Plaintiffs re-allege paragraphs 1 and 2 of Count I.

34.-36. Plaintiffs re-allege paragraphs 15 and 16 of Count II.

37.-40. Plaintiffs re-allege paragraphs 7, 8, 9 and 10 of Count I.

41. The defendants CHICAGO PARK DISTRICT and its Commissioners and officers have expended said federal financial assistance in a racially and ethnically discriminatory manner, as set forth in the following paragraphs of this Count in violation of the regulations of the Departments of Housing and Urban Development and Interior.

42.-51. Plaintiffs re-allege paragraphs 18 through 27 of Count II.

52. Since November, 1977, by means of an examination not reasonably job-related, not reasonably free of cultural, racial and sexual bias, and administered under such circumstances as not to assure objectivity, impartiality, accuracy or consistency, defendants have engaged in a pattern of behavior which seeks to (1) eliminate large numbers of black salaried physical instructors entitled to job benefits; (2) of those retained or rehired, to eliminate their entitlement to job benefits and security, (3) to replace such terminated or demoted black employees with employees disproportionately white, to whom job benefits and security are provided in disproportionate numbers.

53. By reason of the aforesaid behavior of defendants, plaintiffs MC GEE, TUCKER, GARRETT, FISHER and others similarly situated have been discriminated against and wrongfully terminated from their jobs.

54. By reason of the aforesaid behavior of defendants, plaintiffs OGLESBY, BARNETT and others similarly situated have been discriminated against and (1) wrongfully paid less than others performing the same work, with similar skills, and (2) denied benefits, including accrual of vacation, pension rights, sick leave and pension benefits provided to others performing the same work.

55. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged, and this suit for injunctive relief, reinstatement, back pay and damages is the only means of securing adequate relief. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendants' policies, practices, usages and customs of discrimination against blacks.

WHEREFORE, plaintiffs respectfully request that this Court enter a temporary injunction, of the scope outlined below, advance this case on the docket, order a speedy hearing at the earliest practicable date, cause the case to be in every way expedited, and upon such hearing:

(a) Permanently enjoin defendants, their officers, agents, successors, employees, attorneys and those acting in concert with defendants from continuing or maintaining the policy and practice of discriminating against plaintiffs and others similarly situated;

(b) Declare the "civil service test" administered to plaintiffs by defendants to be invalid and void, and permanently enjoin defendants from denying plaintiffs employment on the basis of the said test, and denying them status as salaried employees entitled to full benefits;

(c) Reinstate as "monthly" employees entitled to all benefits plaintiffs MC GEE, TUCKER, GARRETT, FISHER and others similarily situated, and award them back pay and benefits for the period from their wrongful termination to the date of the Court's remedial order herein;

(d) Order that plaintiff OGLESBY and others similarly situated be accorded status as salaried physical instructors entitled to full benefits, effective retroactively to the date determined by the Court to be the date, in each case, when the status should have been accorded them;

(e) Order that plaintiff BARNETT and others similarly situated be awarded back pay retroactively for the period beginning with the date when they should have been appointed and paid as physical instructors;

(f) Award plaintiffs their costs, expenses and attorneys' fees herein and such other and additional relief as may appear reasonable and just.

**COUNT IV—EMPLOYMENT DISCRIMINATION VIOLATIVE OF CONSTITUTION AND SUBSTANTIVE PROVISIONS OF 42 U.S.C. 1983**

56. This is a claim in equity for employment discrimination seeking injunctive relief, back pay and damages, brought under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, Article I, Section 2 of the Illinois Constitution, and 42 U.S.C. 1983.

57. Plaintiffs in this Count III are EARLINE OGLESBY, MARTHA MC GEE, ALTHEA TUCKER, ROSEMARY GARRETT, KAREN TURNER, OSCAR WELLS, CHRISTOPHER DELANO BARNETT, RENÉE BRADFORD, CHARLES ADKINS, WILLIAM HALL, LUIS DIAZ, NATALIE LYLE, and AGNES BERNAUGH, all of whom are current or former black and Latino employees of the PARK DISTRICT, and COMITE LATINO. Each plaintiff sues on his or her own behalf and on behalf of all other black and Latino residents of Chicago who are injured by the various acts of discrimination alleged herein. This is a proper class action under Rule 23(b)(2), Federal Rules of Civil Procedure. The class is so numerous that joinder of all members is impracti-

cable; there are questions of law and fact common to the class; the claims of the named plaintiffs will fairly and adequately protect the interest of the class. In addition, the defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

58. Defendants in this Count III are the CHICAGO PARK DISTRICT, O'MALLEY, JONES, FORAN, LEE, MAROVITZ, MC GOWAN, SIMON, KELLY and BARTHOLOMAY, in both their individual and representative capacities, and MC HUGH in his representative capacity only.

59. The defendant CHICAGO PARK DISTRICT, through its Commissioners and officers, is charged by law with the duty "to manage and control the officers and property of such DISTRICT" (Ill. Rev. Stat., Chapter 105, Section 8-1), in the discharge of which governmental function the PARK DISTRICT is subject to the guarantees of due process and equal protection of the laws provided by the Fourteenth Amendment to the United States Constitution, and to the provisions of Article I, Section 2 of the Illinois Constitution which requires that "no person shall be deprived of life, liberty or property without due process law nor be denied the equal protection of the laws".

60. Pursuant to its powers, the defendant PARK DISTRICT maintains and operates parks and park facilities in various parts of the City of Chicago, develops and administers programs for the various parks, assigns staff and personnel, provides funding, secures police protection and promulgates ordinances and resolutions controlling the operation and use of the parks and facilities.

61. The defendant PARK DISTRICT has, through the actions of its Board of Commissioners and its officers and agents, including the individual defendants herein, developed and maintained a policy, practice, custom and usage of hiring,

assigning and promoting its employees on the basis of race and ethnic background in that, in part, the PARK DISTRICT has perpetuated "white" parks and facilities in white communities, to which white employees are assigned in disproportionately high numbers, and, in part, by excluding blacks and persons of Latino descent from the upper administrative positions in the PARK DISTRICT.

62. Similarly, defendants have developed and maintained a policy of establishing and perpetuating "black" and "Latino" parks and facilities in black and Latino communities, to which blacks and Latinos are assigned either exclusively or in disproportionately high numbers. Conversely, blacks and Latinos are routinely, and as a matter of policy, practice, custom and usage denied the opportunity to transfer, be assigned to or be promoted into jobs located at white parks in white communities.

63. At the same time, defendants have for several years developed and maintained a policy and practice of allocating funds to parks on a discriminatory basis, with a high correlation between larger allocations of funds and predominantly white communities.

64. Similarly, and as a result, the assignment of administrative, recreational, support and maintenance staff varies substantially from park to park with a high correlation between greater numbers and higher quality of personnel assigned and predominance of whites in the communities served, and a similarly high correlation between lower numbers and lower quality of staff assigned and predominance of blacks and persons of Latino descent in the communities served. Facilities serving minority communities have substantially fewer experienced staff and personnel of all types than do facilities serving predominantly white communities. Also, and as a result of the policy, practice, custom and usage of assigning and promoting its employees on the basis of race and ethnic

background, blacks and person of Latino descent are denied the opportunity to hold upper administrative positions in the PARK DISTRICT on the same basis as whites.

65. The fact that significantly less funds are allocated to black and Latino parks, and substantially fewer staff assigned to them than to white parks, combined with the policy, custom and practice of defendants of hiring, assigning and paying personnel on a racially and ethnically discriminatory basis, produces the result that black and Latino employees are forced to compete against others for fewer jobs commanding less funds than those available to their white counterparts, which fact has caused defendants to devise such expedients as the "civil service examination" described in Counts II and III hereto for the purpose of reducing the number of the DISTRICT's black and Latino employees, and effectively reducing their rate of pay by creating large numbers of hourly employees in black and Latino parks.

66. As a further result of defendants' aforesaid policy, practice, custom and usae, plaintiffs KAREN TURNER, LUIS DIAZ and others similarly situated have been forced to resign from the employ of the PARK DISTRICT, due to their realization that their opportunities for reassignment, higher pay and promotions were severly limited by reason of defendants' limiting blacks and Latinos to employment, assignment, pay and promotions within the context of black and Latino parks, or have been wrongfully terminated. The aforesaid policy, practice, custom and usage of defendants have deprived and continue to deprive plaintiffs of property without due process of law, and have denied and continue to deny them the equal protection of the laws in violation of the Constitution and Laws of the United States and the State of Illinois.

67. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged and this suit for a permanent injunction, reinstatement of some plaintiffs, back pay and damages, is their only means of securing adequate

relief. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendants' policy, practice, custom and usage of discrimination against blacks and Latinos with respect to hiring, assignment and promotion.

WHEREFORE, plaintiffs respectfully request that this Court enter a temporary injunction of the scope outlined below, advance this case on the docket, order a speedy hearing at the earliest practicable date, cause the case to be every way expedited, and upon such hearing:

(a) Permanently enjoin defendants, their officers, agents, successors, employees, attorneys, and those acting in concert with defendants from continuing maintaining the policy and practice of discriminating against Plaintiffs and others similarly situated with respect to any aspect of employment, including hiring, assignment, pay and promotion.

(b) Reinstate plaintiffs TURNER, DIAZ and others similarly situated, and award them back pay and benefits for the period from their wrongful coerced resignations to the date of the Court's remedial order.

(c) Award all plaintiffs back pay based on what their pay would have been if they had been permitted to compete freely for employment, assignment, equal pay and promotion from the date of their employment to the date of the Court's remedial order.

(d) Allow plaintiffs their costs and expenses herein, including reasonable attorneys' fees and such other and additional relief as may appear reasonable and just.

## COUNT V—EMPLOYMENT DISCRIMINATION VIOLATIVE OF DEPARTMENTAL FUNDING REGULATIONS, FOR WHICH SECTION 1983 RELIEF SOUGHT

68.-69. Plaintiffs re-allege paragraphs 1 and 2 of Count I.

70.-71. Plaintiffs re-allege paragraphs 38 and 39 of Count IV.

72.-75. Plaintiffs re-allege paragraphs 7, 8, 9 and 10 of Count I.

76. The defendant, CHICAGO PARK DISTRICT, and its Commissioners and officers have expended said federal financial assistance in a racially and ethnically discriminatory manner, as set forth in the following paragraphs of this Count.

77.-81. Plaintiffs reallege paragraphs 46, 47, 48, 49 and 50.

82. As a further result of defendant's aforesaid policy, practice, custom and usage, plaintiffs KAREN TURNER, LUIS DIAZ, and others similarly situated have been forced to resign from the employ of the PARK DISTRICT, due to their realization that their opportunities for reassignment, higher pay and promotions were severely limited by reason of defendants' limiting blacks and Latinos to employment, assignment, pay and promotions within the context of black and Latino parks, or have been wrongfully terminated.

83. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged, and this suit for a permanent injunction, reinstatement of some plaintiffs, back pay and damages, is their only means of securing adequate relief. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendants' policy, practice, custom and usage of discrimination against blacks and Latinos with respect to hiring, assignment and promotion.

WHEREFORE, plaintiffs respectfully request that this Court enter a temporary injunction of the scope outlined below, advance this case on the docket, order a speedy hearing at the earliest practicable date, cause the case to be in every way expedited, and upon such hearing:

(a) Permanently enjoin defendants, their officers, agents, successors, employees, attorneys, and those acting in concert with defendants from continuing or maintaining the policy and practice of discriminating against plaintiffs and others similarly situated with respect to any aspect of employment, including hiring, assignment, pay and promotion.

(b) Reinstate plaintiffs TURNER, DIAZ and others similarly situated, and award them back pay and benefits for the period from their wrongful coerced resignations to the date of the Court's remedial order.

(c) Award all Plaintiffs back pay based on what their pay would have been if they had been permitted to compete freely for employment, assignment, equal pay and promotion from the date of their employment to the date of the Court's remedial order.

(d) Allow Plaintiffs their costs and expenses herein, including reasonable attorneys' fees and such other and additional relief as may appear reasonable and just.

## COUNT VI—GENERAL VIOLATIONS OF DEPARTMENTAL FUNDING REGULATIONS RESULTING IN PERSONAL INJURIES, FOR WHICH SECTION 1983 AND OTHER RELIEF SOUGHT

84.-85. Plaintiffs re-allege paragraphs 1 and 2 of Count I.

86. Plaintiffs in this Court VI are JUAN GOMEZ, a minor, by his father ANGEL GOMEZ; ANTHONY GRAY, a minor, by his mother BEVERLY GRAY; WILLIE GASTON, a minor, by his mother ARLENE GASTON, and COMITE LATINO. Each plaintiff sues on his or her own behalf and on behalf of all black and Latino residents of Chicago who are injured by the discrimination alleged herein. This is a proper class action under Rules 23(b)(2) and (3), Federal Rules of Civil Procedure. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the named plaintiffs will fairly and adequately protect the interests of the class. In addition, the defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

87. Defendants in this Count IV are CHICAGO PARK DISTRICT, O'MALLEY, JONES, FORAN, LEE, MARO-

VITZ, MC GOWAN, SIMON, KELLY and BARTHOLOMAY, in both their individual and representative capacities, and MC HUGH in his representative capacity only.

88. The defendants, CHICAGO PARK DISTRICT and its Commissioners and officers have expended said federal financial assistance in a racially and ethnically discriminatory manner in violation of the regulations of the Departments of Housing and Urban Development and Interior and 42 U.S.C. Section 1983. Specifically, parks and facilities which principally serve neighborhoods which are predominantly inhabited by black, Latino and poor persons receive substantially less maintenance, staff aid and safety inspections and reviews than do parks serving neighborhoods which are predominantly inhabited by white persons. As a result, substantial hazardous conditions are created and continue to exist in parks located in neighborhoods which serve primarily black, Latino and poor neighborhoods with resultant personal injuries to minority park patrons.

89. Among the facilities and services operated by the defendant PARK DISTRICT is a recreational area and swimming pool known as "Wentworth Gardens", located in a Chicago Housing Authority project at 37th Street and Wentworth Avenue in Chicago, Illinois. The Wentworth Gardens recreational complex and swimming pool is controlled, staffed, equipped and operated by the CHICAGO PARK DISTRICT on behalf of the Chicago Housing Authority.

90. On or about June 16, 1979 the minor plaintiffs herein swam in the pool at Wentworth Gardens. At that time, in keeping with their policy, practice, custom and usage of providing inferior staff, maintenance, equipment and supplies to parks and facilities under the PARK DISTRICT's control located in predominantly black and Latino neighborhoods, personnel of the PARK DISTRICT neglected to clean and maintain the pool, and had as a result attempted to compensate for that fact

by introducing into the water large quantities of chlorine and similar chemicals which were so concentrated as to be toxic and unsafe.

91. As a result thereof, plaintiffs were exposed to and ingested unsafe and hazardous quantities of chlorine, by reason of which they became ill, suffered internal and external injury, have required medical treatment, and have suffered substantial pain, suffering and discomfort.

92. At all times pertinent hereto, plaintiffs exercised that degree of due care for their own safety prescribed by law, and were in no way negligent.

93. The injuries sustained by plaintiffs and others similarly situated were the direct and proximate result of the racially and ethnically discriminatory policies of defendants whereby parks and facilities operated by defendants in black, Latino and poor neighborhoods are deliberately poorly maintained, staffed and funded, thereby causing dangerous conditions to exist and continue in the subject parks and facilities with the result that injuries including but not limited to the kind sustained by plaintiffs are frequently sustained by blacks, Latinos and poor persons who use the said parks and facilities.

94. As well as being unlawful, the acts of defendants described herein are also tortious behavior actionable in this class action claim brought by plaintiffs on their own behalf and on behalf of all others similarly situated who have sustained personal injury by reason of the conditions created by defendants' behavior.

WHEREFORE, plaintiffs respectfully request that this Court:

(a) Award actual and punitive damages to plaintiffs in the amounts of TWENTY-FIVE THOUSAND AND NO/100 ($25,000.00) DOLLARS each;

(b) Award actual and punitive damages, as indicated by the proof upon trial, to all other members of the class as allowed by law;

(c) Award plaintiffs their costs and attorneys' fees;

(d) Grant such other relief as justice and equity may require.

SILAS J. ALEXANDER, KAREN TURNER, RENEE' BRADFORD, LILLIAN SCHREAN, JOEL ALEXANDER, EARLINE OGLESBY, MARTHA MC GEE, ALTHEA TUCKER, ROSEMARY GARRETT, LATOSKI MC CARTY DILLON, BEVERLY GRAY, individually and as mother of ANTHONY GRAY, a minor, ARLENE GASTON, individually and as mother of WILLIE GASTON, a minor, ANGEL GOMEZ, individually and as father of JUAN GOMEZ, a minor, LUIS DIAZ, LUIS FLORES, COMITE LATINO, CLARA EVANS, CHRISTOPHER DELANO BARNETT, OSCAR WELLS, TERRY LEE FISHER, AGNES BERNAUGH, WILLIAM HALL, CHARLES ADKINS, and NATALIE LYLE, on behalf of themselves and others similarly situated,

BY: _____

LAW OFFICES OF
RUFUS COOK, LTD.
Their Attorneys

LAW OFFICES OF RUFUS COOK, LTD.
1331 South Michigan Avenue
Chicago, IL 60605
312/461-1093

Dated: October 24, 1983

42 U.S.C. § 2000e. **Definitions**

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee"

shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any govermental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or

related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

42 U.S.C. § 2000e-1 **Subchapter not applicable to employment of aliens outside State and individuals for performance of activities of religious corporations, associations, educational institutions, or societies**

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

42 U.S.C. § 2000e-2. **Unlawful employment practices.**

**Employer practices**

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would de-

prive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

**Employment agency practices**

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

**Labor organization practices**

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

**Training programs**

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

**Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion**

(e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

**Members of Communist Party or Communist-action or Communist-front organizations**

(f) As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

**National Security**

(g) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

**Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions**

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of

sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206( d ) of Title 29.

**Businesses or enterprises extending preferential treatment to Indians**

( i ) Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

**Preferential treatment not to be granted on account of existing number or percentage imbalance**

( j ) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

42 U.S.C. § 2000e-3. **Other unlawful employment practices**

**Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings**

( a ) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or

applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

**Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception**

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

42 U.S.C. § 2000e-4 **Equal Employment Opportunity Commission**

**Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel**

(a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of Title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of Title 5.

**General Counsel; appointment; term; duties; representation by attorneys and Attorney General**

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall hav responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall

concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

**Exercise of powers during vacancy; quorum**

(c) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

**Seal; judicial notice**

(d) The Commission shall have an official seal which shall be judicially noticed.

**Reports to Congress and President**

(e) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

**Principal and other offices**

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any

or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

**Powers of Commission**

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e-5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

**Cooperation with other departments and agencies in performance of educational or promotional activities**

(h) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and

agencies in the performance of such educational and promotional activities.

**Personnel subject to political activity restrictions**

(i) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of Title 5, notwithstanding any exemption contained in such section.

42 U.S.C. § 2000e-5. **Enforcement provisions**

**Power of Commission to prevent unlawful employment practices**

(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

**Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause**

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged

unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

**State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings**

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful

employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (b) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

**State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission**

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

**Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency**

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

**Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master**

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent

a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

**Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders**

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

**Provision of sections 101 to 115 of Title 29 not applicable to civil actions for prevention of unlawful practices**

(h) The provisions of sections 101 to 115 of Title 29 shall not apply with respect to civil actions brought under this section.

**Proceedings by Commission to compel compliance with judicial orders**

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

**Appeals**

(j) Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

**Attorney's fee; liability of Commission and United States for costs**

(k) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

42 U.S.C. § 2000e-6. **Civil actions by Attorney General**

**Complaint**

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent

or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

**Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single-judge district court: hearing, determination, expedition of action**

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the

circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

**Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission**

(c) Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

**Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer**

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

**Investigation and action by Commission pursuant to filing of charge of discrimination; procedure**

(e) Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or

practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title.

42 U.S.C. § 2000e-7. **Effect on State laws**

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

42 U.S.C. § 2000e-8. **Investigations**

**Examination and copying of evidence related to unlawful employment practices**

(a) In connection with any investigation of a charge filed under section 2000e-5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

**Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements**

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual

interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

**Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance**

(c) Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint

labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General is a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

**Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability**

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

**Prohibited disclosures; penalties**

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

42 U.S.C. § 2000e-9 **Conduct of hearings and investigations pursuant to section 161 of Title 29**

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 shall apply.

42 U.S.C. § 2000e-10. **Posting of notices; penalties**

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

42 U.S.C. § 2000e-11. **Veterans' special rights or preference**

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

42 U.S.C. § 2000e-12. **Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission**

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of Title 5.

(b) In any action or proceding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

42 U.S.C. § 2000e-13. **Application to personnel of Commission of sections 111 and 1114 of Title 18; punishment for violation of section 1114 of Title 18**

The provisions of sections 111 and 1114, Title 18, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of Title 18, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

42 U.S.C. § 2000e-14. **Coordination of efforts and elimination of competition among Federal departments, agencies, etc. in implementation and enforcement of equal employment opportunity legislation, orders, and policies; report to President and Congress**

The Equal Employment Opportunity Commission shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 of each year, the Equal Employment Opportunity Commission shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

42 U.S.C. § 2000e-15 **Presidential conferences; acquaintance of leadership with provisions for employment rights and obligations; plans for fair administration; membership**

The President shall, as soon as feasible after July 2, 1964, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

42 U.S.C. § 2000e-16. **Employment by Federal Government**

**Discriminatory practices prohibited; employees or applicants for employment subject to coverage**

(a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

**Enforcement powers of Commission; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress**

(b) Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity

plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

**Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant**

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

**Section 2000e-5(f) through (k) of this title applicable to civil actions**

(d) The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder.

**Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity**

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

42 U.S.C. § 2000e-17 **Procedure for denial, withholding, termination, or suspension of Government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan**

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of Title 5, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

